

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT SHEAFFER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 19-cv-03899
)	
GLENDALE NISSAN, INC.)	Honorable Sara L. Ellis
)	
Defendant.)	

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO
STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES NOS. 2-5 AND 8**

Defendant Glendale Nissan, Inc. (“Glendale Nissan” or “Defendant”), by and through its undersigned attorneys, hereby submits the following response in opposition to Plaintiff’s Motion to Strike Defendant’s Affirmative Defenses Nos. 2-5 and 8 (the “Motion to Strike”).

ARGUMENT

Plaintiff’s Motion to Strike should be denied as untimely pursuant to Federal Rule of Civil Procedure 12(f)(2). Rule 12(f)(2) provides that a motion to strike an insufficient defense may be made by a party “within 21 days after being served with the pleading.” Fed. R. Civ. P. 12(f)(2). Defendant filed its Answer and Affirmative Defenses on August 8, 2019. (Dkt. 14.) Plaintiff filed his Motion to Strike 34 days later, on September 11, 2019. (Dkt. 19.) Plaintiff did not seek leave to file an untimely motion, nor provide any justification for his untimeliness. Rather, Plaintiff simply filed the motion two weeks after Rule 12(f)(2) required him to do so. Accordingly, Plaintiff’s Motion to Strike should be denied as untimely. *See e.g. Circuit Systems, Inc. v. Mescalero Sales, Inc.*, 925 F. Supp. 546, 548 (N.D. Ill. 1996) (denying motion to strike affirmative defense as untimely where the motion was filed after the time set forth in Rule 12(f)(2)); *Baldonado v. Wyeth*, No. 04 C 4312, 2012 WL 729228, at *5 (N.D. Ill. Mar. 6, 2012) (same).

CONCLUSION

Therefore, for the foregoing reasons, Defendant Glendale Nissan, Inc., respectfully requests that this Court deny Plaintiff's Motion to Strike Defendant's Affirmative Defenses Nos. 2-5 and 8 as untimely pursuant to Federal Rule of Civil Procedure 12(f)(2) and grant such further relief as it deems just and equitable.

Dated: September 16, 2019

GLENDALE NISSAN, INC.

By: /s/ *Elizabeth M. Pall*
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, states that she caused copies of the foregoing Defendant's Response to Plaintiff's Motion to Strike Defendant's Affirmative Defenses Nos. 2-5 and 8 to be filed and served through the Court's CM/ECF electronic filing system on September 16, 2019.

/s/ Elizabeth M. Pall _____